

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**IDAHO POWER COMPANY,****Complainant,****v.****CITY OF EAGLE, IDAHO,****Respondent.**

)

)

CASE NO. IPC-E-04-4

)

)

)

NOTICE OF COMPLAINT AND

)

NOTICE OF PREHEARING

)

CONFERENCE

)

)

ORDER NO. 29444

)

On February 11, 2004, Idaho Power Company filed a complaint against the City of Eagle. In its complaint, the Company requests the Commission issue an Order directing the utility to construct a new 138-kV transmission line from the Eagle substation to a new substation in Star along one of two transmission corridors through Eagle. Alternatively, if the City insists that the transmission line be located on another alternative route or buried underground, the Company requests permission to collect a surcharge from customers located within the corporate boundaries of Eagle. The surcharge would recover the additional incremental costs associated with either underground construction or using an alternative route. The Company claims that if the new transmission line is not available by May 2005, there is a material "risk of service degradation in the Star-Eagle area" next summer.

THE COMPLAINT***A. Background***

The complaint outlines the events leading up to its filing. Briefly, in December 2000 Idaho Power filed an application to obtain a conditional use permit from the City of Eagle so that the Company could erect the taller poles for the new 138-kV transmission line. More specifically, the Company identified a need to construct a new single pole, single circuit 138-kV transmission line from its existing Eagle substation to a new substation to be constructed near Star, Idaho, between Plummer Lane and Highway 16. The new Star substation is located approximately 625 feet north of State Highway 44 (State Street). Complaint at ¶ 1.

In its permit application, the Company proposed to follow the existing transmission corridor and replace its existing 69-kV transmission line with the larger transmission line. To mitigate the need for taller poles, Idaho Power offered to reconstruct a number of smaller distribution lines in and around the downtown area. Specifically, the Company proposes to

bury the overhead distribution lines along the alley located south of State Street between [the] Eagle Substation and Eagle Road and eliminate the overhead distribution lines crossing State Street at Second Street and at Eagle Road. By burying the[se] distribution lines, the [height of the poles necessary to carry the new transmission line] could be reduced by several feet.

Id. at ¶ 3. At the suggestion of the City, Idaho Power withdrew this application and agreed to form a citizens advisory committee to obtain additional public input regarding a preferred route for the new transmission line through the City.

After holding a series of meetings with the citizens committee and obtaining public input, the Company evaluated 16 different transmission routes. The citizens committee's preferred solution to the transmission corridor dilemma was to recommend that the line be constructed underground. However, to construct a large capacity transmission line underground adds significant costs to the project "in the range of \$5-\$6 million, and that by necessity the additional cost would have to be borne by the residents of the City." *Id.* at ¶ 6.

The citizens committee's preferred route was to build the new line from the intersection of State Street and Edgewood south to the Eagle bypass (State Highway 44). The line would then follow the bypass in a westerly direction until it reconnects with State Street at approximately Ballantyne Road. From there the line would follow the existing transmission corridor to the new Star substation. This recommended route, identified as Alternative No. 1 (the Eagle bypass route), was the route proposed in the Company's next permit application to the City in September 2002. *Id.* at ¶ 7.

During this second permit application, the City funded a study by an independent engineering firm to evaluate the costs of constructing the line underground. The results of the study were presented to the City Council in July 2003. In its study, the engineering firm advised the City that constructing the new transmission line underground for a distance of 1.6 miles would cost approximately \$9.5 million, or \$9 million more than the overhead alternative. *Id.* at ¶ 8.

In September 2003, the City's Planning and Zoning Commission recommended that the Company's application to construct the line along the Eagle bypass be denied allegedly because it would "be unsightly and would have an adverse effect on the commercial development taking place" along the Eagle bypass. *Id.* at ¶ 9. When this matter was taken up by the City Council on October 28, 2003, the Council remanded the application back to the planning Staff. *Id.*

B. Need for the New Line

Idaho Power maintains that its present facilities are particularly vulnerable to service degradation because the facilities serving that area are severely strained. To adequately serve growth in the Eagle-Star-Meridian areas of Ada County, the Company states it must construct several new transmission facilities, including the line that is the subject of this complaint. The Company's current analyses indicate that unless the 138-kV line is constructed and available for service by May 2005, the risk of service degradation in the Star-Eagle area in the summer of 2005 is material. Final design, materials procurement and construction of a 138-kV line depending on the route can require a year or more to complete. *Id.* at ¶¶ 1, 15, 22.

C. The Alternative Routes

In its complaint, the Company asks the Commission to issue an Order directing the utility to construct the new transmission line on one of six transmission routes. The first three alternatives shown on Complaint Exhibit 2 would involve no additional cost to the City. For the remaining three alternatives (4, 5, and 6), Idaho Power requests that the City contribute to the additional costs associated with these routes and configurations.

The six proposed routes are set out below.

<u>Proposed Route</u>	<u>Description</u>	<u>Cost to the City</u>
1. Eagle By-pass	Citizens Panel's preferred route along by-pass (Hwy 44)	0
2. Existing 69-kV line	Along State Street	0
3. Existing 69-kV line with underground distribution	Along existing State Street route with distribution lines underground to Jackson Square	0

4. Existing 69-kV line with distribution underground	Along existing State Street route with distribution underground from substation to Ballantyne Road	\$1.956 million
5. Hwy 55-Floating Feather	North along Hwy 55, then west along Floating Feather; south on Linder Road	\$1.512 million
6. Hwy 55-Beacon Light	North along Hwy 55; west along Beacon Light; south on Linder Road	\$2.842 million

Exhibit Nos. 1-3.

Idaho Power maintains that it is unfair for its other customers to absorb the higher costs associated with re-routing or burying the line based upon “the City’s dissatisfaction with the aesthetics of overhead transmission facility located within existing transmission corridors through the City. Such increased cost would ultimately result in the Company’s other customers paying rates that are unjust, unreasonable, discriminatory and preferential.” Complaint at ¶ 14. Idaho Power is requesting that the Commission exercise its statutory authority to prevent such a result.

If the Company is directed to construct its transmission line along one of the more costly alternatives (Nos. 4-6) or underground, the Company requests authority to file tariffs to impose a surcharge upon Eagle City customers. *Id.* See ¶ 23. If the City desires to pursue underground construction, the additional incremental cost would be not less than \$5-6 million and could be as much as \$9 million. The additional costs related to alternate routing or underground construction, plus interest, should be amortized over a period not to exceed 10 years. *Id.*

D. Legal Issues

Idaho Power asserts that the Commission has authority to address this matter. More specifically, the Company maintains that *Idaho Code* § 61-508 authorizes the Commission to order the Company to construct the necessary facilities. In particular, this section provides that:

Whenever the commission, . . . upon complaint, shall find that additions, extensions, repairs or improvements to or changes in the existing plant, scales, equipment, apparatus, facilities or other physical property of any public utility . . . ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in said order.

Idaho Code § 61-508 (emphasis added). In the addition to the preceding section, Idaho Power also relies on another statute found in the Local Land Use Planning Act, *Idaho Code* §§ 67-6501 *et seq.* In particular, *Idaho Code* § 67-6528 provides in pertinent part that

if a public utility has been ordered or permitted by specific order . . . to do or refrain from doing an act by the public utilities commission, any action or order of a governmental agency pursuant to Titles 31, 50 or 67, Idaho Code, in conflict with said public utilities commission order, shall insofar as it is in conflict, [be] null and void if prior to entering said order, the public utilities commission has given the affected governmental agency an opportunity to appear before or consult with the public utilities commission with respect to such conflict.

Idaho Code § 67-6528 (emphasis added).

Given its desire to place the subject transmission line in service no later than May 2005, Idaho Power requests that the Commission consider this matter on an expedited basis. The Company suggests that the Commission convene a prehearing conference at its earliest convenience to discuss the processing of this matter.

DISCUSSION

This matter was brought before the Commission at its public meeting on February 23, 2004. At that time, Staff recommended that rather than issuing a summons requiring the City to file an answer to the complaint, that it would be more appropriate to process this matter as a petition or an investigation. IDAPA 31.01.01.053, .054 and .057. The Staff also recommended that the Commission schedule a prehearing conference so that the parties may discuss how this case of first impression should be processed.

NOTICE OF PREHEARING CONFERENCE

Based upon our review of the complaint and Staff's recommendations, we find it is unnecessary to require the City to file an answer to the complaint. Given the unusual nature of this case, we further find that it is appropriate to schedule a prehearing conference in this matter for the parties to discuss and recommend to the Commission how this matter may be processed. Because of the previously scheduled hearings and other demands on the Commission's time, we shall direct the parties to conduct a prehearing conference without the Commission's presence.

YOU ARE HEREBY NOTIFIED that the Commission has scheduled a prehearing conference to convene at **3 P.M., MARCH 31, 2004, IN THE UTILITY CONFERENCE ROOM, 472 W. WASHINGTON STREET, BOISE, IDAHO 83702 (334-0330)**. The purpose of the prehearing conference will be for the parties to discuss how this matter should be processed and to discuss the discovery, testimony, and hearing schedule.

YOU ARE FURTHER NOTIFIED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338 (Telephone)
(208) 334-3762 (FAX)
E-Mail: secretary@puc.state.id.us

YOU ARE FURTHER NOTIFIED that the complaint and its exhibits have been filed and are available for public inspection during regular business hours at the Commission offices. The complaint and exhibits are also available on the Commission's website at www.puc.state.id.us under the "File Room" icon.

YOU ARE FURTHER NOTIFIED that all hearings will be conducted pursuant to the Rules of Procedure adopted by the Idaho Public Utilities Commission. IDAPA 31.01.01.000 *et seq.*

YOU ARE FURTHER NOTIFIED that the Commission has jurisdiction over this matter pursuant to Title 61 and specifically *Idaho Code* §§ 61-503, 61-508, and 67-6528.

ORDER

IT IS HEREBY ORDERED that the City of Eagle shall be excused from filing an answer to the complaint.

IT IS FURTHER ORDERED that the parties appear at the prehearing conference on March 31, 2004 at 3 p.m.

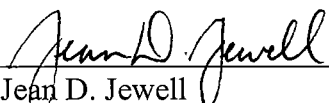
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th day of March 2004.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

vld/O:IPCE0404_dh